

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SONIA JOSEPH, individually and as
Special Administrator of the ESTATE OF
GIOVONN JOSEPH-McDADE, and
GIOVANNI McDADE, individually,

Plaintiffs,

v.

CITY OF KENT, a Washington
municipality; CITY OF KENT POLICE
DEPARTMENT; WILLIAM DAVIS;
MATTHEW RAUSCH; and JOHN DOES
1-10,

Defendants.

No. 2:20-cv-00771-BJR

**STIPULATION AND PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged:

- 4 1) Kent Police Department officer and employee personnel files, benefits files,
5 disciplinary files, or other employee files to the extent the documents, any
6 individual pages of a multi-page document, or any of their contents are exempt
7 under the Public Records Act¹;
- 8 2) Complaints against Kent Police Department officers or employees to the extent
9 the documents, any individual pages of a multi-page document, or any of their
10 contents are exempt under the Public Records Act²;
- 11 3) Kent Police Department internal investigations;
- 12 4) Incident or investigation reports that contain non-party witness information;
- 13 5) The autopsy photographs for Giovonn Joseph-McDade;
- 14 6) All tax and financial records produced by Plaintiffs;
- 15 7) All medical records and treatment provider information produced by Plaintiffs.

16 3. SCOPE

17 The protections conferred by this agreement cover not only confidential material (as
18 defined above), but also (1) any information copied or extracted from confidential material;
19 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
20 testimony, conversations, or presentations by parties or their counsel that might reveal
21 confidential material. However, the protections conferred by this agreement do not cover
22 information that is in the public domain or becomes part of the public domain through trial

23

24 ¹ Pursuant to subsection 4.2 below, Plaintiffs, their counsel, and their representatives will not
25 disclose any documents or other files listed in this subsection without first discussing the potential
26 disclosure with counsel for Defendants. If the parties cannot reach agreement on disclosure, the
27 parties will submit the requested disclosure to the court for resolution prior to any disclosure.

28 ² Pursuant to subsection 4.2 below, Plaintiffs, their counsel, and their representatives will not
29 disclose any documents or other files listed in this subsection without first discussing the potential
30 disclosure with counsel for Defendants. If the parties cannot reach agreement on disclosure, the
31 parties will submit the requested disclosure to the court for resolution prior to any disclosure.

1 or otherwise.

2 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

3 4.1 Basic Principles. A receiving party may use confidential material that is
4 disclosed or produced by another party or by a non-party in connection with this case only
5 for prosecuting, defending, or attempting to settle this litigation. Confidential material may
6 be disclosed only to the categories of persons and under the conditions described in this
7 agreement. Confidential material must be stored and maintained by a receiving party at a
8 location and in a secure manner that ensures that access is limited to the person authorized
9 under this agreement.

10 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Prior to the
11 disclosure of any document or other item that **may** contain confidential information, the
12 parties agree to meet and confer with the opposing party regarding the potential disclosure.
13 If the parties cannot come to agreement regarding the disclosure, the parties agree to submit
14 the dispute to the Court pursuant to Section 6 of this agreement, below. Unless otherwise
15 ordered by the court or permitted in writing by the designating party, a receiving party may
16 disclose any confidential material only to:

17 (a) the receiving party's counsel of record in this action, as well as
18 employees of counsel to whom it is reasonably necessary to disclose the information for
19 this litigation;

20 (b) the officers, directors, and employees (including in-house counsel) of
21 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the
22 parties agree that a particular document or material produced is for Attorney's Eyes Only
23 and is so designated;

24 (c) experts and consultants to whom disclosure is reasonably necessary
25 for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
26 (Exhibit A);

27 (d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that
2 are shown to be clearly unjustified or that have been made for an improper purposed (e.g.,
3 to unnecessarily encumber or delay the case development process or to impose unnecessary
4 expenses and burdens on other parties) expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it
6 designated for protection do not qualify for protecting, the designating party must promptly
7 notify all other parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
10 or ordered, disclosure or discovery material that qualifies for protection under this
11 agreement must be clearly so designated before or when the material is disclosed or
12 produced.

13 (a) Information in documentary form: (e.g., paper or electronic
14 documents and deposition exhibits, but excluding transcripts of depositions or other pretrial
15 or trial proceedings). The designating party must affix the word "CONFIDENTIAL" to
16 each page that contains confidential material. If only a portion or portions of the material
17 on a page qualifies for protection, the producing party also must clearly identify the
18 protected portion(s) (e.g., by making appropriate markings in the margins).

19 (b) Testimony given in deposition or in other pretrial proceedings: the
20 parties and any participating non-parties must identify on the record, during the deposition
21 or other pretrial proceeding, all protected testimony, without prejudice to their right to so
22 designate other testimony after reviewing the transcript. Any party or non-party may, within
23 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
24 designate portions of the transcript, or exhibits thereto, as confidential. If a party or
25 non-party desires to protect confidential information at trial, the issue should be addressed
26 during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDER PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons

1 execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as
2 Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
4 MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the obligations of
7 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
8 provision is not intended to modify whatever procedure may be established in an
9 e-discovery order or agreement that provides for production without prior privilege review.
10 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth
11 herein.

12 10. NON-TERMINATION AND RETURN OF DOCUMENTS

13 Within 60 days after the termination of this action, including all appeals, each
14 receiving party must destroy all confidential material, including all copies, extracts and
15 summaries thereof.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of
17 all documents filed with the court; trial, deposition, and hearing transcripts;
18 correspondence; deposition and trial exhibits; expert reports; attorney work product; and
19 consultant and expert work product, even if such material contains confidential material.

20 The confidentiality obligations imposed by this agreement shall remain in effect
21 until a designating party agrees otherwise in writing or a court orders otherwise.

22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

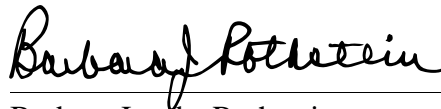
23
24 DATED: _____
Attorneys for Plaintiff

25
26 DATED: _____
Attorneys for Defendant

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production
3 of any documents in this proceeding shall not, for the purposes of this proceeding or any
4 other proceeding in any other court, constitute a waiver by the producing party of any
5 privilege applicable to those documents, including the attorney-client privilege, attorney
6 work-product protection, or any other privilege or protection recognized by law.

7 Dated this 29th day of September, 2020.

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10 Barbara Jacobs Rothstein
11 U.S. District Court Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name]. of

_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Western District of
Washington on _____ in the case of Sonia Joseph, et al. v. City of Kent, et al., Case
No. 2:20-cv-00771-BJR. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

DATED: September 29, 2020

KEATING, BUCKLIN & McCORMACK, INC., P.S.

By: /s/ Derek C. Chen

Derek C. Chen, WSBA #49723

Attorney for Defendants

801 Second Avenue, Suite 1210

Seattle, WA 98104

Phone: (206) 623-8861

Fax: (206) 223-9423

Email: dchen@kbmlawyers.com

SCHROETER, GOLDMARK & BENDER

By: /s/ Craig A. Sims

(signed per email permission of 9/27/2020)

Craig A. Sims, WSBA # 28267

Kaitlin T. Wright, WSBA #45241

Attorneys for Plaintiffs

810 Third Avenue

Seattle, WA 98104

Phone (206) 622-8000

Fax (206) 682-2305

Email: csims@sbg-law.com

Email: wright@sbg-law.com